

REMARKS / ARGUMENTS

In the Office communication mailed November 15, 2004, the Examiner rejected claims 1-7 [sic, claims 1-8?]. More specifically, the Examiner rejected claims 1, 3, 4, 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Firmberger, U.S. Patent 3,822,860 (the Firmberger '860 patent) in view of Lea, U.S. Patent 3,046,978 (the Lea '978 patent); rejected claims 5 and 7 (sic, claims 5 and 8?) under 35 U.S.C. § 103(a) as being unpatentable over the Firmberger '860 patent in view of Coates et al, U.S. Patent 5,996,579 (the Coates '579 patent); and rejected claim 2 under 35 U.S.C. § 103(a) as being unpatentable over the Firmberger '860 patent.

The Examiner is requested to reconsider and further examine this application, as amended, for the following reasons given in connection with a discussion of the prior art.

Claim 1

Claim 1 has been amended to more clearly define applicants' invention and more clearly distinguish applicants' invention from the prior art. More specifically, claim 1 has been amended to more clearly define that the target indicia on the self-inflating bag is used so that the rescuer will apply force to the self-inflating bag in a manner that will first force air from the self-inflating bag through the tube and the face mask into the patient's lungs to ventilate the patient's lungs, and then will compress the patient's sternum area.

In rejecting claim 1 under 35 U.S.C. § 103(a) as being unpatentable over the

Firmberger '860 patent in view of the Lea '978 patent, the Examiner stated:

5 “Firmberger discloses the applicant’s invention as claimed with the exception of providing target indicia on the self-inflating bag to indicate the proper position of the self-inflating bag on the patient’s sternum area and to indicate the proper location on the self-inflating bag for applying force to the topside of the self-inflating bag.

10 Lea discloses a manually operated resuscitator that provides target indicia on the self-inflating bag (see figure 1) to indicate the proper position of the self-inflating bag on the patient’s sternum area and to indicate the proper location on the self-inflating bag for applying force to the topside of the self-inflating bag. Therefore it would have been obvious to modify Firmberger’s invention by providing target indicia on the self-inflating bag to indicate the proper position of the self-inflating bag on the patient’s sternum area and to indicate the proper location on the self-inflating bag for applying force to the
15 topside of the self-inflating bag in order to provide proper amount of force to the self-inflating bag.”

It is respectfully submitted that the Examiner is in error and that the prior art, taken as a whole, does not disclose or suggest the specific combination of claim 1 within the meaning of 35 U.S.C. § 103(a) for at least the following reasons.

20 The undersigned attorney has carefully studied the Lea '978 patent and submits that there is absolutely no teaching or suggestion therein of any “target indicia to indicate the proper position of the self-inflating bag on the patient’s sternum area.”

Rather, it is submitted that the Lea '978 patent teaches directly away from such target indicia. It is clear from a close study of the Lea '978 patent that the bulb **16** is **NOT**
25 positioned, and **SHOULD NOT** be positioned, on the patient’s sternum area. The bulb **16** of the Lea resuscitator is joined to the nozzle **11** thereof (the part adapted to be inserted into a patient’s mouth) by way of a **rigid** connecting tube **50**. The rigid tube **50** would cause the bulb **16** to be located a spaced distance in front of the patient’s face, not positioned **on** the patient’s sternum area. Further, any attempt to use the teaching of
30 the indicia of the Lea '978 patent as support for indicating the proper position of the

self-inflating bag on the patient's sternum area would go against the clear and direct teaching of the Lea '978 patent. See, for example, column 1, lines 40-47 of the Lea '978 patent where it is stated: "Still another object is provision of a resuscitation device ... permitting the patient's body to be **free and clear** so that supplementary resuscitation
5 processes such as artificial respiration by diaphragm manipulation can be performed." (emphasis added) The patient's body would not, of course, be free and clear if the bag was **ON** the patient's sternum area.

Thus, even assuming arguendo, without admitting, that it would have been obvious to combine the Firmberger '860 patent and the Lea '978 patent as proposed by
10 the Examiner, such a combination clearly would not have resulted in applicants' cardiopulmonary resuscitation device as specifically defined by claim 1, including target indicia on the bag to indicate the proper position of the bag on the patient's sternum area. Rather, such a combination would have resulted in a device merely having target indicia on the bag to indicate where to compress the bag to force out a certain volume of
15 air, based on the patient's age, but such indicia would not indicate the proper position of the bag on the patient's sternum area, and would not guide the rescuer to apply force to the self-inflating bag in a manner that will first force air from the self-inflating bag through the tube and the face mask into the patient's lungs to ventilate the patient's lungs, and then compress the patient's sternum area. There is no teaching or suggestion
20 in the prior art, taken as a whole, of somehow using the indicia of the Lea '978 patent to indicate the proper position of the bag on the patient's sternum area, rather than indicating where to compress the bag to force out a certain volume of air, based on the patient's age, while locating the bag so as to permit the patient's body to be free and

clear.

Means for indicating the proper position of the self-inflating bag on the patient's sternum area is a critical, key function of applicants' cardiopulmonary resuscitation device. There is no means on applicants' cardiopulmonary resuscitation device for
5 indicating where on the bag to compress the bag so as to force a certain amount of air out of the bag. To merely add means for indicating how much air to force out of the bag of the Firmberger '860 patent would not result in or suggest applicants' specifically claimed cardiopulmonary resuscitation device.

Accordingly, it is submitted that claim 1 is not suggested by the prior art within
10 the meaning of 35 U.S.C. § 103. Reconsideration and allowance of claim 1 is requested.

Claim 2

Claim 2 depends from claim 1 and distinguishes from the prior art for the same reasons as hereinabove given relative to claim 1. In rejecting claim 2 under 35 U.S.C. § 103(a) as being unpatentable over the Frimberger '860 patent, the Examiner stated:

15 "In reference to claim 2, the applicant claims [sic - applicants claim] a target indicia that includes a bottom target indicia on the bottom side of the self-inflating bag to indicate the proper position of the self-inflating bag on the patient's sternum area. It is not necessary to provide target indicia on both top
20 and bottom of the self-inflating bag. As long as there are indicia located either on top (see Lea US Patent No 3,046,978) or bottom of the self-inflating bag it is good enough to indicate the proper position of the self-inflating bag on the patient's sternum area. Therefore it is considered a simply [sic - simple] matter of design choice to either have the target indicia located on top or bottom surface of the self-inflating bag."

25 While applicants agree that it might not be "necessary" to provide target indicia on both top and bottom of the self-inflating bag, and that it might be "good enough" to locate indicia either on top or bottom of the self-inflating bag, in matters of life and

death, it is applicants contention that the preferred embodiment of their cardiopulmonary resuscitation device should go well beyond what is "good enough" or what might be "necessary." The Examiner should be aware that claim 2 is a dependent claim and, by its very nature, is directed toward limitations that are not believed "necessary," but it is
5 respectfully submitted that the specific limitations of dependent claim 2 are much more than "simply a matter of design choice." For optimum cardiopulmonary resuscitation, it is very important that the rescuer visually insures that **BOTH** the bottom of the bag is in the proper position on the patient's sternum area **AND** his hand is in the proper position on the top of the bag. While the rescuer might be able to do both functions "good
10 enough" as long as there are indicia located either on top or bottom of the bag, to insure that both the bottom of the bag is in the proper position on the patient's sternum area and the rescuer's hand is in the proper position on the top of the bag, it is applicants' strong belief that target indicia should be provided on both top and bottom of the self-inflating bag.

15 Accordingly, it is submitted that claim 2 is not suggested by the prior art within the meaning of 35 U.S.C. § 103. Reconsideration and allowance of claim 2 is requested.

Claims 3-5

Claims 3-5 depends from claim 1 and distinguish from the prior art for the same reasons as hereinabove given relative to claim 1. Accordingly, claims 3-5 are not
20 suggested by the prior art within the meaning of 35 U.S.C. § 103. With respect to claim 5, even if something in the prior art suggested including the pharmaceutical composition of the Coates '579 patent in the bag of the Frimberger '860 patent, such a modified

device would not include target indicia to indicate the proper position of the bag on the patient's sternum area as hereinabove stated relative to claim 1. Reconsideration and allowance of claims 3-5 are requested.

Claim 6

5 Claim 6 defines a cardiopulmonary resuscitation method including the step of providing a cardiopulmonary resuscitation device having all the limitations of claim 1 including the target indicia to indicate the proper position of the self-inflating bag on the patient's sternum, and thus distinguishes from the prior art for the same reasons as hereinabove given relative to claim 1. Accordingly, claim 6 is not suggested by the prior
10 art within the meaning of 35 U.S.C. § 103. Reconsideration and allowance of claim 6 is requested.

Claims 7 and 8

 Claims 7 and 8 depend from claim 6, and thus distinguish from the prior art for the same reasons as hereinabove given relative to claim 6. With respect to claim 7, even if
15 something in the prior art suggested including the pharmaceutical composition of the Coates '579 patent in the bag of the Frimberger '860 patent, such a modified device would not include target indicia to indicate the proper position of the bag on the patient's sternum area as hereinabove stated relative to claim 6. Accordingly, claims 7 and 8 are not suggested by the prior art within the meaning of 35 U.S.C. § 103.
20 Reconsideration and allowance of claims 7 and 8 are requested.

Conclusion

In conclusion, it is submitted that the present application and all of its remaining claims are now in condition for an early allowance. All the prior art of record has been reviewed and considered but are not felt to come within the coverage of the claims now
5 in this case or to disclose or suggest the invention as specifically defined by the claims now in this case. Applicants' claimed cardiopulmonary resuscitation device that is not only concerned with the proper positioning of the self-inflating bag on the patient's sternum, but also the proper positioning of the heel of the rescuer's hand on top side of the bag. Nothing in the prior art provides or suggest such a cardiopulmonary
10 resuscitation device. If the Examiner is of the opinion that a telephone conference relative to this case would advance the prosecution, the Examiner is respectfully requested to call the undersigned attorney at the indicated telephone number.

Applicants respectfully requests that a timely Notice of Allowance be issued in this case.

Application No. 10/820,239
Reply to Office action of November 15, 2004

Respectfully submitted,

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